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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,887	10/24/2003	Hans-Peter Weitzel	WAS 0606 PUS	1906
22045	7590	09/22/2005	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			EGWIM, KELECHI CHIDI	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/692,887

Applicant(s)

WEITZEL ET AL.

Examiner

Dr. Kelechi C. Egwim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 102403 & 030104.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-15 are rejected under 35 U.S.C. 102(b) as anticipated by Mayer et al. (6,300,403 or 2001/0025078) or Weitzel (EP 1110978 or EP 1065224).

Each of Mayer et al. (col. 5, lines 9-45 and col. 6, lines 6-10 in '403 and ¶'s 24, 25, 27 and 30 in '078) and Weitzel [(col. 5, lines 3-44 in 6,605,663, which is the English translation of EP 1065224) and (col. 5, lines 7-55 in 6,576,698, which is the English translation of EP 1110978)], individually, teach synthetic emulsion powders obtained by drying a composition that comprises an emulsion where the dispersoid is a polymer having one or more of the claimed unsaturated monomer units and up to 20% of a polyvinyl alcohol protective colloid having up to 10 mol% of units from a monomer such as ethene (ethylene), and having the claimed degrees of hydrolysis and viscosity. The powders are additives to admixture such a mortars.

Thus, the requirements for rejection under 35 U.S.C. 102(b) are met.

***Claim Rejections - 35 USC § 102/103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, 35 U.S.C. 103(a) as being unpatentable over Nakamae et al. (USPN 6,001,903).

In col. 1, lines 43-45 and col. 2, line 4 to col. 3, line 65, Nakamae et al. teach synthetic resin emulsion powders obtained by drying a composition that comprises an emulsion where the dispersoid is a polymer having one or more of the claimed unsaturated monomer units and 0.5 to 100 parts, based on 100 parts of the dispersoid, of a polyvinyl alcohol dispersant having up to 5 mol% of units from a monomer such as ethylene, and having a degrees of hydrolysis from 40 to 99.9%. The powders are additives to admixture such a mortars.

While Nakamae et al. do not expressly teach properties, such as "Höppler viscosity" disclosed in the claims, it is still reasonable that the polyvinyl alcohol protective colloids of Nakamae et al. would possess the presently claimed properties since the composition of the polyvinyl alcohol protective colloids of Nakamae et al. are essentially the same as the claimed composition and the USPTO does not have at its disposal the tools or facilities deemed necessary to make physical determinations of the sort. In any event, an otherwise old composition is not patentable regardless of any

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new or unexpected properties. In re Fitzgerald et al , 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § 2112 - § 2112.02.

Even if assuming that the prior art references do not meet the requirements of 35 U.S.C. 102, it would still have been obvious to one of ordinary skill in the art, at the time the invention was made, to arrive at the same inventive composition because the disclosure of the inventive subject matter appears within the generic disclosure of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (571) 272-1099. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KCE

**KELECHI C. EGWIM PH.D.**  
**PRIMARY EXAMINER**

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the bottom.